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#9
Brief
E. Gehman
4/30/02

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Lashley :
Serial No. 09/678,537 : Group Art Unit: 3728
Filed: October 3, 2000 : Examiner: Gehman, B

Title: Container Apparatus and Method :

BRIEF ON APPEAL

Hon. Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

The following appeal brief is submitted pursuant the appeal, the notice of appeal having been filed on this same date September 18, 2001, from the action of the primary examiner dated June 21, 2001 in the above identified application. A check for a small entity of \$310.00 for a notice of appeal and for the appeal brief is included with this brief.

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I. STATUS OF CLAIMS

Claims 1-20 are pending in the application. The final form of these claims after one amendment (amending claims 1, 11, 12, and 15) is enclosed with this appeal brief.

II. STATEMENT IDENTIFYING "REAL PARTY IN INTEREST"

The real party in interest in this matter is Natalie Lashley, the inventor and applicant residing at 920-17 Baychester Avenue, Bronx, N.Y. 10475.

III. STATEMENT IDENTIFYING RELATED APPEALS AND INTERFERENCES

There are no other appeals and there are no interferences related to this matter.

IV. COPIES OF APPEAL PAPERS

One original and three copies of the appeal brief and all accompanying papers are enclosed.

V. COPIES OF CLAIMS INVOLVED IN FINAL FORM

Copies of all the claims in the case in their final form are enclosed. (Three copies and one original). However, the appeal is only of rejections of claims 1-11 and 17-18. (Claims 12-16 and 19-20 have been allowed).

VI. STATUS OF AMENDMENTS

The present application, serial number 09/678,537 is a continuation application which claims the benefit of U.S. Patent application, 09/387,877 filed on September 1, 1999, also titled "CONTAINER APPARATUS AND METHOD" which issued as U.S. Patent No. 6,161,696 on

December 19, 2000.

The present continuation application as filed contained 20 claims.

In a first office action dated February 27, 2001 the examiner rejected claims 1-6 and 11 based on 35 U.S.C. 102(b) based on various patents, and claims 7-10 and 17-18 based on 35 U.S.C. 103 based on various patents. Claims 1-3, 5-9, and 11-20 were rejected under a non-statutory double patenting rejection. There were also various procedural objections.

The applicant amended claims 1, 11, 12, and 15 by amendment filed May 15, 2001 and also resolved the various procedural objections. The applicant also filed a terminal disclaimer to obviate the non-statutory double patenting rejection.

In a second office action dated June 21, 2001, the examiner rejected claim 9 under 35 U.S.C. 112, rejected claims 1-11 and 17-18 under 35 U.S.C. 103(a) based on various patents, and allowed claims 12-16 and 19-20.

Claims 1-20 are now pending in the case. The applicant filed the notice of appeal regarding the June 21, 2001 action on September 18, 2001 along with this appeal brief.

VII. SUMMARY OF INVENTION

Claim 1 of the present invention specifies:

1. An apparatus comprising:
 - a base having a plurality of receptacles, each of the plurality of receptacles having a first dimension;
 - a plurality of containers; wherein each of the plurality of containers corresponds to one of the plurality of receptacles;
 - wherein each receptacle has first and second opposing inner walls and the first dimension of each of the receptacles is the distance between that receptacle's first and second opposing inner walls;
 - wherein each container has opposing outer walls and each container has a first dimension which is the distance between the outer parts of the opposing outer walls and the first dimension of each container is about the same as the first dimension of its corresponding receptacle;
 - wherein at least one outer wall of each container is comprised of means for attaching each container to the base; and

wherein each of the plurality of containers includes means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other.

Claim 1 specifies that each container includes both means for attaching that container to the base and means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other. In addition, the base has a plurality of receptacles each having opposing inner walls, each container has opposing outer walls, and the distance between both the opposing inner walls of each of the receptacles of the base is about the same as the distance between the opposing outer walls of each of the containers.

For example, in the present application, container 100a includes a recess 112a into which a protrusion such as protrusion 227a can be inserted to hold the container 100a to a base assembly 300. (Application p. 10, Ins. 12-16; Fig. 1, 2, 6, and 7) Container 100a also includes protrusions 172a-178a within a recess 166 at its bottom which can be inserted into the recesses (like recesses 151a-154a) at the top of a container 100b to stack and hold together the containers 100a and 100b. (Application, p. 9, Ins. 7-18; p. 14, Ins. 8-9; Figs. 12 and 13). The container 100a includes opposing outer walls, such as walls 104a and 108a (See Fig. 9), which can fit within opposing inner walls (such as 211a and 215, see Fig. 2) of a receptacle, such as receptacle 200a. (Application, p. 6, Ins. 10-12, Ins. 18- p. 7, ln. 1; Fig. 1,2 9).

Claims 2-10, and claim 17 are dependent on claim 1 and also include further limitations. Claim 17 requires that each of the containers contains pharmaceuticals.

Claim 11 specifies a means for temporarily attaching each of a plurality of containers to a base and means for attaching each container to each other so that the containers are stacked one on top of the other. In claim 11, the means for attaching each container to the base includes a first recess in each outer wall of each container. Claim 18 is dependent on claim 11 and also

includes further limitations. Claim 18 requires that each of the containers contains pharmaceuticals.

Claims 12-16 and 19-20 have been allowed and for that reason no discussion is necessary.

VIII. ISSUES – REJECTIONS BY EXAMINER

The remaining issues in the case is as follows:

(A) Rejection Under 35 U.S.C. 112:

1. Was claim 9 properly rejected under 35 U.S.C. 112, first paragraph? (Note: May be avoided by amendment after final office action).

(B) Rejections under 35 U.S.C. 103 based on Moore combined with other patents:

2. Were claims 1-3, 8-9 and 11 properly rejected under 35 U.S.C. 103(a) based on Moore (4,624,383) in view of Conner (2,217,644)?
3. Were claims 1-2, 4, 6, 7, 9, and 11 properly rejected under 35 U.S.C. 103(a) based on based on Moore in view of Klein (4,757,898)?
4. Were claims 1, 3, 5, and 8-9 properly rejected under 35 U.S.C. 103(a) based on based on Moore in view of Buchholz et. al. (4,785,953)?
5. Was claim 10 properly rejected under 35 U.S.C. 103(a) based on Moore, Conner, Klein, Buchholz, and further in view of Ruff (D328,706)?
6. Were claims 17 and 18 properly rejected under 35 U.S.C. 103(a) based on Moore in view of either one of Conner and Buchholz and further in view of either one of Schaffer (692,166) and Sandhage (3,731,819)?

IX. THE REFERENCES

The following references are relied on by the Examiner in the rejections of the office action of June 21, 2001 :

1. Moore, U.S. Patent No. 4,624,383;
2. Conner, U.S. Patent No. 2,217,644;
3. Klein , U.S. Patent No. 4,757,898;
4. Buchholz, U.S. Patent No. 4,785,953;
5. Ruff, U.S. Design Patent No. D328,706;
6. Schaffer, U.S. Patent No. 692,166; and
7. Sandhage, U.S. Patent No. 3,731,819.

X. BRIEF DESCRIPTION OF THE REFERENCES

1. Moore, U.S. Patent No. 4,624,383

Moore discloses using milk or juice containers as building blocks. The milk or juice containers can interlock with each other on their sides or by being stacked one on top of another. (Moore, Col. 2, Ins. 5-14; Figs. 7, 12-14). An object of Moore is to use these building blocks for children's erector set type toys or as lawn furniture, tables, sheds, etc. (Moore, col. 1, Ins. 6-24). Moore does not appear to disclose a base or to disclose that outer opposing walls of each of the containers would be about the same distance apart as inner walls of receptacles of a base.

2. Conner, U.S. Patent No. 2,217,644

Conner discloses a plurality of compartment units which are detachably held by recesses of a base 5. (Conner, p. 1, col. 2, Ins. 1-21, Fig. 1 and 2.)

3. Klein , U.S. Patent No. 4,757,898

Klein discloses attaching individual packages to a support base 21. (Klein, col. 6, Ins. 24-33). However, Klein eliminates stacking each individual package. (Klein, col. 6, Ins. 24-26).

4. Buchholz, U.S. Patent No. 4,785,953

Discloses retaining containers, such as container 10, in rack 24. (Buckholz, col. 5, Ins. 7-12; Fig. 1).

5. Ruff, U.S. Design Patent No. D328,706

Ruff shows a hexagonal shape for an ornamental design for a display package for light.

6. Schaffer, U.S. Patent No. 692,166

Schaffer discloses a base portion which has recesses for bottles. (Schaffer, p. 1, col. 1, Ins. 38-42, Fig. 1).

7. Sandhage, U.S. Patent No. 3,731,819

Sandhage discloses a plurality of sleeves 13 of a base 12 each of which can hold diagnostic bottles, such as bottle 15. (Sandhage, col. 2, Ins. 22-38, Fig. 1).

XI. ARGUMENT

A. Point I – Claims 1-11 and 17-18 should not have been rejected under 35 U.S.C. 103(a) based on Moore in combination with various other patents

In his last office action, the examiner admits that:

“... the combination of structure appears to be novel from the prior art ...”. (Exh. A, paragraph 6, office action dated June 21, 2001).

However, the examiner rejects the various claims without any real suggestion in the various patents for combining those patents. This was improper.

Also the examiner states that "One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." (Exh. A, paragraph 6, office action June 21, 2001, citing In re Keller, 642 F.2d 413) However, the examiner's previous rejection of claims 1-6 and 11 was based on one patent (i.e. anticipation under 35 U.S.C. 102). (Exh. B, Office action dated February 27, 2001, pp. 2-3). Thus the examiner, arguably, changed his grounds for rejection to obviousness and didn't give the applicant a proper chance to respond before final rejection. This action by the examiner would respectfully appear to be arbitrary and capricious.

Referring to the patents cited by the examiner, Moore discloses using milk (Fig. 1) or juice containers (Fig. 7) as play blocks or to build furniture by allowing these blocks to interlock with each other. Moore does not disclose a base. Large containers, such as milk or juice containers, are typically not connected to a base and it would not be obvious to modify Moore to provide a base or to provide each container with means for attaching to a base.

All of the patents (except for the Ruff design patent re the hexagonal design, and the Klein patent) that have been combined with Moore to reject under 35 U.S.C. 103 pertain to containers that neither Moore nor parents would want children handling and for that reason it is doubtful that they would be combined with Moore. For example, Buchholz deals with a "reagent" container, such as for "radioactive reagents". (Buchholz, col. 1, Ins. 32-34). Conner deals with various cosmetic preparations. (Conner, col. 1, Ins. 4-7). Sandhage deals with medical diagnostic agents. (Sandhage, col. 1, Ins. 4-20). Schaffer deals with a medicine carrier. (Schaffer, col. 1, Ins. 9-15). Parents would not want their children to become comfortable handling such containers, even if such containers were empty.

Although the Klein patent mentions food and beverage packaging (Klein, col. 1, Ins. 13-23), Klein expressly teaches against combining the ability to attach to a base and to attach and stack individual containers or packages to each other by stating that "stacking" each individual package is "eliminated". (Klein, col. 6, Ins. 24-33).

With regards to claims 17-18 of the present invention, Moore does not mention pharmaceutical containers. It is doubtful whether Moore (or parents) would want children to become comfortable with playing with pharmaceutical containers as building blocks, even if those pharmaceutical containers were empty. Moore's reason for creating stackable large containers, i.e. to create large building blocks, would not be desirable for pharmaceutical containers.

The present application provides a different reason for creating stackable pharmaceutical containers that can also attach to a base, and that is to allow one to carry any number of containers in a purse or pocket. (Present application, pg. 15, Ins. 8-9).

Conner, Klein, Buchholz, Schaffer, and Sandhage each show a plurality of containers or packages attached to a base. However, none of them suggests that each package or container should include means for stacking on top of one another and attaching to one another along with means for attaching to a base. Based on the comments in Klein it appears that the prior art considered stacking containers or attaching to a base to be mutually exclusive and it is not suggested in any patent cited how both of these ends would be achieved or that it would be desirable to do both.

The only reason provided by Moore to provide a stacking feature is to allow one to use containers as building blocks. However, it is doubtful those skilled in the art, particular in the pharmaceutical area, would complicate a packaging design to allow children to use pharmaceutical containers as building blocks. Thus it is not obvious to combine the features of stackability (and attachment) with attachability to a base. The present invention, in one

embodiment, provides a different reason for having both features.

Claims 7 and 8 of the present application additionally require the receptacles of the base to be arranged in rows of seven columns. Claim 7 specifies four rows of seven columns and claim 8 specifies one row of seven columns. The present application indicates that seven columns are used to provide a convenient seven day supply or about a 28 day or roughly a month's supply (four x seven). (Present application, p. 15, Ins. 2-4). The patents cited by the examiner for rejecting claims 7 and 8 (Klein for rejecting claim 7 and Conner and Buchholz for rejecting claim 8, see Exh. A, paragraph 3, "As to claim 7 ..." and "As to claim 8".) do not in any way suggest that seven might be an appropriate number of columns for the receptacles of the base). It is respectfully submitted that a suggestion is required.

B. Point II – Claim 9 rejection under 35 U.S.C. 112, if appropriate, overcome by amendment after final office action

The examiner has rejected claim 9 under 35 U.S.C. 112. The examiner indicates that the structure in claim 9 should be related to means for attaching of parent claim 1. The applicant does not necessarily agree, however, the applicant has supplied an amendment after final office action which would appear to eliminate this ground of rejection. The amendment relates the structure of claim 9 to the means for attaching of parent claim 1 as suggested by the examiner. .

XII. CONCLUSION

In view of the foregoing, the remaining claims 1-20 in the case are considered in a condition for allowance. Favorable reconsideration of this application, is respectfully requested. Please charge deposit account no. 20-0437 for any further deficiency in this matter.

DATED: 9/18/01

Respectfully submitted,



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(Signature of person mailing paper)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Lashley :
Serial No. 09/678,537 : Group Art Unit: 3728
Filed: October 3, 2000 : Examiner: Gehman, B

Title: Container Apparatus and :
Method :

FINAL FORM OF CLAIMS FOR APPEAL

Hon. Commissioner of
Patents and Trademarks
Washington, D.C. 20231

To Whom it may concern:

Claims 1-20 were pending before the examiner at the time of the final rejection of claims 1-11 and 17-18 (claims 12-16 and 19-20 were allowed) by the office action dated June 21, 2001. The current final form of the claims in this matter are shown below. The final form of the claims

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reflects an amendment filed May 15, 2001 in which claims 1, 11, 12, and 15 were amended. The final form of the claims does not reflect the amendment after final office action, which if permitted would amend only claim 9 (to overcome rejection under 35 U.S.C. 112). If the amendment of claim 9 is permitted, the final form of the claims for appeal would be as shown in the amendment after final office action (i.e. claim 9 would be amended).

CURRENT FINAL CLAIMS NOT INCLUDING AMENDMENT AFTER FINAL OFFICE ACTION

1. An apparatus comprising:

a base having a plurality of receptacles, each of the plurality of receptacles having a first dimension;

a plurality of containers; wherein each of the plurality of containers corresponds to one of the plurality of receptacles;

wherein each receptacle has first and second opposing inner walls and the first dimension of each of the receptacles is the distance between that receptacle's first and second opposing inner walls;

wherein each container has opposing outer walls and each container has a first dimension which is the distance between the outer parts of the opposing outer walls and the first dimension of each container is about the same as the first dimension of its corresponding receptacle;

wherein at least one outer wall of each container is comprised of means for attaching each container to the base; and

wherein each of the plurality of containers includes means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other.

2. The apparatus of claim 1 wherein

the first dimension of each of the plurality of containers is slightly greater than the first dimension of its corresponding receptacle.

3. The apparatus of claim 1 wherein

the first dimension of each of the plurality of containers is slightly lesser than the first dimension of its corresponding receptacle.

4. The apparatus of claim 1 wherein:

the base has a top surface;

each of the plurality of receptacles is comprised of a plurality of walls, each of which extends upward from the top surface of the base.

5. The apparatus of claim 1 wherein

each of the plurality of containers has a lid which can be sealed and unsealed;

and wherein the means for attaching each container to the base is comprised of a recess in at least one outer wall of each container.

6. The apparatus of claim 1 wherein

the plurality of receptacles is arranged in a plurality of rows and columns.

7. The apparatus of claim 6 wherein

the plurality of receptacles is comprised of twenty-eight receptacles which are arranged in four rows of seven columns.

8. The apparatus of claim 1 wherein

the plurality of receptacles is comprised of seven receptacles which are arranged in one

row and seven columns;

and wherein the base is a elongated strip and there are only seven receptacles on the elongated strip.

9. The apparatus of claim 1 wherein

each of the plurality of containers has a protrusion at its top and a recess at its bottom so that a first container can be stacked on a second container by inserting the protrusion at the top of the second container into the recess at the bottom of the second container.

10. The apparatus of claim 1 wherein

each of the plurality of containers has a bottom surface bounded by a plurality of outer walls which define an octagonal shape.

11. An apparatus comprising:

a base;

a plurality of containers;

means for temporarily attaching each of the plurality of containers to the base;

wherein each of the plurality of containers is a sealable container;

wherein each of the plurality of containers can be removed from the base and thereafter sealed;

wherein each of the plurality of containers includes a first outer wall and wherein the means for temporarily attaching each of the plurality of containers to the base includes a first recess in each first outer wall; and

wherein each of the plurality of containers includes means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other.

12. An apparatus comprising:

a base;

a plurality of containers;

means for temporarily attaching each of the plurality of containers to the base;

wherein each of the plurality of containers is a sealable container;

wherein each of the plurality of containers can be removed from the base and thereafter sealed;

wherein each of the plurality of containers includes a first outer wall and wherein the means for temporarily attaching each of the plurality of containers to the base includes a first recess in each first outer wall; and

wherein each of the plurality of containers can be stacked on top of each of the other containers of the plurality of containers so that a plurality of containers are held together;

wherein the means for temporarily attaching each of the plurality of containers to the base is a plurality of receptacles comprised of one receptacle for each of the plurality of containers;

and wherein each of the plurality of receptacles includes a first protrusion each of which fits inside a corresponding first recess of a first outer wall of a corresponding container to temporarily attach the corresponding container to the base.

13. The apparatus of claim 12 wherein:

wherein the plurality of receptacles are arranged in a plurality of rows and a plurality of columns;

wherein each of the plurality of containers includes a second outer wall and wherein the means for temporarily attaching each of the plurality of containers to the base includes a second recess in each second outer wall; and

wherein each of the plurality of receptacles includes a second protrusion each of which fits inside a corresponding second recess of a second outer wall of a corresponding container to temporarily attach the corresponding container to the base.

14. An apparatus comprised of:

a plurality of containers each of which is comprised of:

a plurality of walls

a bottom surface;

a lid;

a base;

means for temporarily attaching each of the plurality of containers to the base;

wherein the plurality of walls, bottom surface, and lid of each of the plurality of containers enclose a substantially sealed chamber when each of the lids is in a closed position;

wherein when each of the lids is in an opened position there is an opening at the top of each of the chambers, wherein each of the tops of each of the chambers is opposite its corresponding bottom surface, and each of the chambers is bounded by its corresponding plurality of walls, and its corresponding bottom surface,

wherein each of the lids and each set of plurality of walls of each of the plurality of

containers are substantially opaque;

wherein the bottom surface of each of the plurality of containers is transparent, so that an individual can see inside the corresponding chamber through the corresponding bottom surface;

and wherein each of the plurality of containers can be stacked on top of each of the other containers of the plurality of containers so that a plurality of containers are held together.

15. An apparatus comprised of

a first substantially sealable container;

a second substantially sealable container;

wherein the first container can be stacked on top of the second container;

a base;

means for temporarily attaching each of the containers to the base;

the first container and the second container are each comprised of a top portion and a bottom recess;

wherein the top portion of the first container can be inserted into the bottom recess of the second container and the top portion of the second container can be inserted into the bottom recess of the first container;

wherein the top portion and the bottom recess of both the first and second containers each include first devices for temporarily holding the first and second containers together when they are stacked on top of one another;

and wherein the first container includes a second device for temporarily holding the first container to a base and the second container includes a second device for temporarily holding the second container to a base, wherein the first container's first device and the first container's

second device are different, and the second container's first device and the second container's second device are different.

16. The apparatus of claim 15 wherein

the top portion of the first container is of substantially same shape and size, as the bottom recess of the second container such that the top portion of the first container fits snugly into the bottom recess of second container; and

the top portion of the second container is of substantially same shape and size, as the bottom recess of the first container such that the top portion of the second container fits snugly into the bottom recess of first container.

17. The apparatus of claim 1 wherein

each of the containers contains pharmaceuticals.

18. The apparatus of claim 11 wherein

each of the containers contains pharmaceuticals.

19. The apparatus of claim 14 wherein

each of the containers contains pharmaceuticals.

20. The apparatus of claim 15 wherein

each of the containers contains pharmaceuticals.

DATED: 9/18/01

Respectfully submitted,



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